

Diane M. Doolittle (CA Bar No. 142046)
dianedoolittle@quinnemanuel.com
Sara Jenkins (CA Bar No. 230097)
sarajenkins@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Andrew H. Schapiro (admitted *pro hac vice*)
andrewschapiro@quinnemanuel.com
Teuta Fani (admitted *pro hac vice*)
teutafani@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401

Stephen A. Broome (CA Bar No. 314605)
stephenbroome@quinnemanuel.com
Viola Trebicka (CA Bar No. 269526)
violatrebicka@quinnemanuel.com
Crystal Nix-Hines (Bar No. 326971)
crystalnixhines@quinnemanuel.com
Alyssa G. Olson (CA Bar No. 305705)
alyolson@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Josef Ansorge (admitted *pro hac vice*)
josefansorge@quinnemanuel.com
Xi ("Tracy") Gao (CA Bar No. 326266)
tracygao@quinnemanuel.com
Carl Spilly (admitted *pro hac vice*)
carlspilly@quinnemanuel.com
1300 I Street NW, Suite 900
Washington D.C., 20005
Telephone: (202) 538-8000
Facsimile: (202) 538-8100

Jomaire Crawford (admitted *pro hac vice*)
jomairecrawford@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Jonathan Tse (CA Bar No. 305468)
jonathantse@quinnemanuel.com
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE SUBMISSION RE: IN CAMERA
REVIEW AND RE-REVIEW PROPOSAL
(RE: DKT. 522)**

Referral: Hon. Susan van Keulen, USMJ

1 April 11, 2022

2 Submitted via ECF
Magistrate Judge Susan van Keulen
3 San Jose Courthouse
Courtroom 6 - 4th Floor
4 280 South 1st Street
San Jose, CA 95113

5 Re: Google Submission re: *In Camera Privilege* Review and Re-Review Proposal
6 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)

7 Dear Magistrate Judge van Keulen:

8 Pursuant to your Honor's April 1, 2022 order (Dkt. 522), Google submits this statement,
9 supporting declaration, and documents (submitted *in camera*) for the Court's consideration.

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GOOGLE'S STATEMENT

I. PLAINTIFFS' REQUEST FOR REMOVAL OF CERTAIN REDACTIONS FROM DOCUMENT SUBMITTED IN CAMERA (GOOG-CABR-05269357.R)

Plaintiffs' request for production of GOOG-CABR-05269357.R with certain redactions removed should be denied because the redacted content discusses and reflects legal advice of Google in-house counsel, and it is thus protected from disclosure by the attorney-client privilege. GOOG-CABR-05269357.R is a 94-page slide presentation of which only five pages contain redactions. Plaintiffs have challenged the redactions on only two pages (at -380.R-81.R), which correspond to a single slide and the associated presenter notes. Dkt. 516-3, at 3. The redacted information in this section contains and reflects legal guidance from Google in-house counsel regarding regulatory compliance and competition issues. Bindra Decl. ¶¶ 3-5. As such, it is protected from disclosure by the attorney-client privilege. *See Chrimar Sys. Inc v. Cisco Sys. Inc*, 2016 WL 1595785, at *3 (N.D. Cal. Apr. 21, 2016) ("[A] document that is not communicated between an attorney and a client may still be privileged as long as 'the document by its nature and contents memorializes and reflects legal advice rendered in a privileged conversation.'" (citing *Baxter Healthcare Corp. v. Fresenius Med. Care Holding, Inc.*, 2009 WL 533124, at *1 (N.D. Cal. Mar. 3, 2009)); Oct. 27, 2021 Hrg. Tr. 9:13-19 ("[Y]ou often have non-lawyers transmitting legal advice, sharing legal advice, acting on legal advice that is reflected in a document, and as we know . . . from the Ninth Circuit, transmitting legal advice, sharing it, discussing it, even without the lawyer, is still within the coverage of attorney-client privilege."). Plaintiffs' request to compel production of this document with these two redactions removed should be denied.

II. GOOGLE'S RE-REVIEW PROPOSAL

Google has identified a random sample of 500 documents from its privilege logs where (i) the document has been designated as privileged in the document's text, but no attorney is identified on Google's privilege log; and (ii) emails where an attorney is copied and does not respond. These categories align with Plaintiffs' complaints from the parties' joint brief. *See* Dkt. 516-3, at 2. Google has already begun re-reviewing these documents, and it expects to provide the results of this re-review and produce any documents that it determines were inadvertently mis-designated as privileged by April 19, 2022.

If the error rate for these 500 documents is over 10%, Google will re-review an additional random sample of 500 documents from the same two categories described above. If this additional re-review proves to be necessary, Google will complete it by April 29, 2022.

This proposal is reflected in Google's Proposed Order submitted concurrently with this statement.

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Andrew H. Schapiro

Andrew H. Schapiro (admitted *pro hac vice*)
andrewschapiro@quinnemanuel.com
Teuta Fani (admitted *pro hac vice*)
teutafani@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
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Telephone: (650) 801-5000
Facsimile: (650) 801-5100

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alyolson@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
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Jomaire A. Crawford (admitted *pro hac vice*)
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Jonathan Tse (CA Bar No. 305468)
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Facsimile: (415) 875-6700

Attorneys for Defendant Google LLC